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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL MARTINEZ,
Petitioner,

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vs.

BRIAN WILLIAMS, *et al.*,
Respondents.

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Case No. 3:14-cv-00282-HDM-WGC

ORDER

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This is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. On September 15, 2014, the Court entered an order striking the original petition and requiring petitioner to file an amended petition using the Court's approved habeas corpus form within thirty days. (ECF No. 3). The thirty-day period has now expired, and petitioner has not filed an amended petition or otherwise responded to the Court's order.

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District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Pagtalunan v. Galaza*, 291 P.3d 639, 643 (9th Cir. 2002) (dismissal of habeas corpus petition with prejudice for failure to prosecute action and failure to comply with a court order); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with

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1 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
 2 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41
 3 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep
 4 court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
 5 (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
 6 Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
 8 order, or failure to comply with local rules, the court must consider several factors: (1) the public's
 9 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk
 10 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
 11 and (5) the availability of less drastic alternatives. *Pagtalunan*, 291 F.3d at 642; *Thompson*, 782
 12 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-
 13 61; *Ghazali*, 46 F.3d at 53.

14 The Court finds that the first two factors, the public's interest in expeditiously resolving this
 15 litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The third
 16 factor, risk of prejudice to respondents, also weighs in favor of dismissal, since a presumption of
 17 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
 18 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 19 factor – public policy favoring disposition of cases on their merits – is greatly outweighed by the
 20 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
 21 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
 22 requirement. *Pagtalunan*, 291 F.3d at 643; *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone*, 833 at
 23 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring petitioner to pay the filing fee
 24 within thirty days expressly stated: "If petitioner fails to provide the Court with his petition using
 25 the Court approved form, this action will be dismissed and closed." (ECF No. 3, at p. 1). Thus,
 26 petitioner had adequate warning that dismissal would result from noncompliance with the Court's
 27 order.

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1 District courts are required to rule on the certificate of appealability in the order disposing of
2 a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and
3 request for certificate of appealability to be filed. Rule 11(a). In order to proceed with any appeal,
4 petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th
5 Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v.*
6 *Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial
7 showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.*; 28
8 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must
9 demonstrate that reasonable jurists would find the district court’s assessment of the constitutional
10 claims debatable or wrong.” *Id.* (*quoting Slack*, 529 U.S. at 484). In order to meet this threshold
11 inquiry, the petitioner has the burden of demonstrating that the issues are debatable among jurists of
12 reason; that a court could resolve the issues differently; or that the questions are adequate to deserve
13 encouragement to proceed further. *Id.* In this case, no reasonable jurist would find this Court’s
14 dismissal of the petition debatable or wrong. The Court therefore denies petitioner a certificate of
15 appealability.

16 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITHOUT**
17 **PREJUDICE** based on petitioner's failure to file an amended petition on the Court's approved
18 habeas corpus form in compliance with this Court's order of September 15, 2014.

19 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**
20 **APPEALABILITY.**

21 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

22 Dated this 29th day of October, 2014.

24 *Howard D. McRibbon*

25 HOWARD D. MCKIBBEN
UNITED STATES DISTRICT JUDGE